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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|------------------------|---------------------|------------------|
| 10/607,690      | 06/30/2003  | Jonathan Scott Darling | 990892-30           | 7686             |

7590 03/31/2006

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EXAMINER

SRIVASTAVA, KAILASH C

ART UNIT PAPER NUMBER

1655

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                           |                     |  |
|------------------------------|---------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b>    | <b>Applicant(s)</b> |  |
|                              | 10/607,690                | DARLING ET AL.      |  |
|                              | <b>Examiner</b>           | <b>Art Unit</b>     |  |
|                              | Dr. Kailash C. Srivastava | 1655                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6.30.2003</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

- 1 Applicants' responsive communication filed 19 December 2005 in response to Office Action mailed 29 November 2005 is acknowledged and entered.
2. To ensure that all papers filed in a response remain together and for expedient communication to a response /amendment filed to an Office Action, Examiner will very much appreciate that in response to this Office Action, applicants label the header at each page of said response with application Serial number, filing date, applicants' name and Attorney's Docket number. This practice immensely minimizes the papers lost during transaction/transmission and facilitates examination.

## **CLAIMS STATUS**

3. Claims 12-16 are cancelled.
4. Claims 17-20 are added.
5. Claims 1-11 and 17-20 are pending.

## ***Restriction/Election***

6. Applicants' election of Group I, Claims 1-11 filed 19 December 2005 in response to Office Action mailed 29 November 2005 is acknowledged and entered. Since the election is made without traverse, the restriction requirement is deemed proper and is made FINAL
7. Claims 1-11 and 17-20 are examined on merits.

## **Information Disclosure Statement**

8. Applicants' Information Disclosure Statement (i.e., IDS) filed 30 June 2003 has been made of record and considered.

## **Objection To Claims – Minor Informalities**

9. Claims 1-11 and newly presented claims 17-20 are objected to because of the following informalities:

- Claims 1-11 and newly introduced claims 17-20 are objected to because at Line one of each one of the cited Claims, before the word "wherein" a --, -- should be inserted.
- It is difficult to distinguish where one claim ends and the next one starts. The examination of all the claims and consequently, entire prosecution will be much facilitated, if the applicants left at least one line space between the two claims.

Appropriate correction is required.

### ***Claim Rejections - 35 U.S.C. § 112***

10. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

***The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.***

11. Claims 1-11 and newly presented Claims 17-20 are rejected under 35 U.S.C. §101 and 35 U.S.C. §112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

- The recitation "naturally recycling protein waste" in Claims 1-11 and newly presented claims 17-20 renders those claims unclear and therefore indefinite, because the metes and bounds of a natural process viz a viz an artificial recycling of protein is not described in claims. Consequently it is difficult to appraise the distinction between a natural and a non-natural processing of protein waste.
- The recitation "enzymatic digest medium" in Claims 1-11 and newly presented claims 17-20 renders those claims unclear and therefore indefinite, because the metes and bounds for an enzymatic digest medium" are not defined. Is this medium an enzyme in water a buffer an enzyme that is dry or what? Appropriate correction/definition is required.
- The recitation "protein solubles" in Claims 1, 5-6 and 19 renders those claims unclear and therefore indefinite, because the metes and bounds for "protein solubles" are not defined. Are these solublized proteins, i.e., hydrolysate or proteins that are soluble in some solvent or aqueous material or what? Applicants need to define the metes and bounds for the phrase, "protein solubles".
- The recitation, "optimal level" in Claim 1 is unclear, vague and indefinite. This term as applied in this claim is similar to the term, "suitable" It is not clear how one can determine with clarity and accuracy when the "optimal" conditions are accomplished without knowing the metes and

bounds or parameters for "optimal". Furthermore, as currently presented, what may be optimal for one situation/ conditions/ parameters may not be suitable for another. Applicants are advised to define the metes and bounds for the recitation "optimal".

- The recitation "includes" renders Claim 10 unclear, vague and indefinite". This term is indefinite because it is not clear whether the term is open, like the conventional term "comprising" or whether the term excludes other ingredients, like the term "consisting of". Examiner suggests that the applicants use the transitional phrase "-comprises".
- Phrase "such that" renders claim 10 vague, unclear and therefore, indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

All other claims depend directly from the rejected claims (e.g., Claim 1) and are, therefore, also rejected under 35 U.S.C. §112, second paragraph for the reasons set forth above.

12. Examiner suggests that the claims must be written according to the standard U.S. Patent Practice. Upon resolution of the above-stated issues under 35 U.S.C. §112, further searching and/or consideration may be required.

### PRIOR ART

13. The following prior art made of record and not relied upon is considered pertinent to Applicants' disclosure.

- Emanuel, U.S. Patent 3,899,419, issued 12 August 1975;
- Freeman et al., U.S. Patent 4,473,589, issued 25 September 1984;
- Shih et al., U.S. Patent 4,959,311, issued 25 September 1990; and
- WO 86/04487, issued 14 August 1986.

### Conclusion


14. For reasons aforementioned, no Claims are allowed.

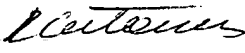
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (571) 272-0923. The examiner can normally be reached on Monday to Thursday from 7:30 A.M. to 6:00 P.M. (Eastern Standard or Daylight Savings Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Terry McKelvey, can be reached on (571)-272-0775 Monday through Friday 8:30 A.M. to 5:00 P.M. The

fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (i.e., PAIR) system. Status information for the published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (i.e., EBC) at: (866)-217-9197 (toll-free). Alternatively, status inquiries should be directed to the receptionist whose telephone number is (703) 308-0196.

  
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RALPH GITOMER  
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March 20, 2006